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07 APR -2 AM 10:40

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DEPUTY

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9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 10 IN AND FOR THE COUNTY OF PIMA

12 THE STATE OF ARIZONA *ex rel.* TERRY
 13 GODDARD, the Attorney General; and THE
 14 CIVIL RIGHTS DIVISION OF THE ARIZONA
 15 DEPARTMENT OF LAW,

No. CV2006-3637

CONSENT DECREE

(Honorable Sarah R. Simmons)
Paul E. Toney

Plaintiff,

vs.

17 TWIN PEAKS CONSTRUCTION, INC. and
 18 DAVID BARNETT, in his official capacity as
 19 GENERAL MANAGER of TWIN PEAKS
 20 CONSTRUCTION, INC.,

Defendant.

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 22 On July 3, 2006 Plaintiff, the State of Arizona, through Attorney General Terry
 23 Goddard and the Civil Rights Division (collectively "the State"), filed this litigation, seeking
 24 damages and injunctive relief against Defendants Twin Peaks Construction, Inc., a Nevada
 25 Corporation ("Twin Peaks"), and David Barnett, in his official capacity as General Manager
 26 of Twin Peaks. The State alleges that Defendants discriminated against a former employee
 27 based on her sex, and retaliated against that former employee for opposing the allegedly

1 discriminatory employment practices, in violation of the Arizona Civil Rights Act, A.R.S. §§
 2 41-1463(B)(2) and 41-1464(A). Defendants deny these allegations. However, the State and
 3 Defendants desire to resolve the issues raised by the Complaint without the time, expense and
 4 uncertainty of further contested litigation. Defendants and the State expressly acknowledge
 5 that this Consent Decree is the compromise of disputed claims and that there was no
 6 adjudication of any claim. Without admitting any liability for the claims made in the
 7 Complaint filed in this matter, Defendants agree to be bound by this Consent Decree and not
 8 to contest that it was validly entered into in any subsequent proceeding to implement or
 9 enforce its terms. The parties therefore have consented to the entry of this Consent Decree,
 10 waiving trial, and findings of fact and conclusions of law.

11 It appearing to the Court that entry of this Consent Decree will further the objectives of
 12 the Arizona Civil Rights Act, and that this Consent Decree fully protects the parties and the
 13 public, with respect to the matters within the scope of this Consent Decree,

14 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
 15 follows:

16 JURISDICTION

17 1. This Court has jurisdiction over the subject matter of this action and over the
 18 parties hereto, and venue in Pima County is proper. The allegations of the Complaint, if proved,
 19 are sufficient to state a claim upon which relief could be granted against Defendant under the
 20 Arizona Civil Rights Act.

21 RESOLUTION OF THE COMPLAINT

22 2. This Consent Decree resolves all issues and claims set forth in the State's
 23 Complaint filed in this case. This Consent Decree also resolves issues and claims relating to
 24 acts and practices to which this Consent Decree is directed. With respect to such matters,
 25 compliance with this Consent Decree shall be deemed to be compliance with those portions of
 26 the Arizona Civil Rights Act that prohibit sex discrimination and retaliation in employment.

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1 NO RETALIATION

2 3. Defendants shall not retaliate against any person in any way for that person's
3 opposition to a practice made unlawful by the Arizona Civil Rights Act, or for their participation
4 in the State's proceedings or litigation, and will make any future employment decisions
5 concerning parties and witnesses on a nondiscriminatory basis.

6 POLICY CHANGES

7 4. Defendants agree to comply fully with the provisions of the Arizona Civil Rights
8 Act (A.R.S. § 14-1401, et seq., as amended) and that all Defendants' employment practices and
9 terms, conditions and privileges of employment shall be conducted and maintained in a manner
10 which does not discriminate on the basis of race, color, religion, sex, age, national origin or
11 disability.

12 5. Within 90 days of the effective date of this Consent Decree, Defendant Twin
13 Peaks will create a written policy, which must be approved by the Division, prohibiting (a)
14 discrimination based upon an employee's race, national origin, color, disability, sex, religion,
15 genetic testing or age as prohibited by the Arizona Civil Rights Act and/or federal employment
16 discrimination laws; and (b) retaliation against any employee or applicant engaging in protected
17 activity under the Arizona Civil Rights Act and federal employment discrimination laws.
18 "Protected activity" includes opposing any practice that is unlawful under these laws, as well as
19 making a charge, testifying, assisting or participating in the administrative process of the
20 Arizona Attorney General's Civil Rights Division and/or the Equal Employment Opportunity
21 Commission.

22 At a minimum, this policy will contain 1) a commitment to these anti-discrimination and
23 anti-retaliation provisions, 2) a process by which a person can internally complain of alleged
24 discrimination and/or retaliation that does not require any complaint to be made in writing, and
25 does not require the employee or candidate to report the alleged discrimination and/or
26 retaliation to the person alleged to have discriminated and/or retaliated against the person, 3)
27 the job title(s) of Defendant's employee(s) responsible for accepting complaints of
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1 discrimination and/or retaliation; and 4) a statement that unlawful discrimination and/or
2 retaliation violates state and federal civil rights laws.

3 Within 10 days of creating this policy, Defendant Twin Peaks agrees to provide a copy
4 to Ann Hobart, Assistant Attorney General ("AAG Hobart"), Arizona Attorney General's
5 Office, 1275 W. Washington Street, Phoenix, Arizona 85007, or her successors, for the
6 Division's review. Upon being notified of the Division's approval, Defendants agree to
7 disseminate the policy to all employees, if any.

8 **TRAINING**

9 6. Within 90 days of the effective date of this Consent Decree, David Barnett and
10 Mary Barnett shall receive training on employment discrimination by a qualified trainer. For
11 purposes of this Consent Decree, a qualified trainer is a person or agency which is
12 knowledgeable about the legal requirements under state and federal employment laws. The
13 training shall consist of at least 3 hours of instruction. If there are costs associated with such
14 training, Defendants shall pay for those costs. Within ten days of the completion of this
15 training, Defendants agree to provide written notice to AAG Hobart that it has complied with
16 the terms of this paragraph.

17 **MONETARY RELIEF**

18 7. Defendant agrees to pay Beth Azriel Garcia the gross sum of Eight Thousand Five
19 Hundred Dollars (\$8,500). Such payment shall be subject to all withholding required by law.
20 Payment will be made within five (5) business days after entry of this Consent Decree, and shall
21 be made payable to Beth Azriel Garcia and sent to AAG Hobart for transmittal to Ms. Garcia.

22 **COSTS**

23 8. The Defendant and the State shall bear their respective attorneys' fees and costs
24 incurred in this action up to the date of entry of this Consent Decree. In any action brought to
25 assess or enforce Defendant's compliance with the terms of this Consent Decree, the Court in its
26 discretion may award reasonable costs and attorneys' fees to the prevailing party.

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1 NEUTRAL EMPLOYMENT REFERENCES

2 9. Defendants shall give a neutral job reference for Ms. Garcia upon the request of a
3 subsequent employer or other party making inquiries about her. This reference shall provide
4 nothing more than the dates of Ms. Garcia's employment by Twin Peaks, her job title and her
5 rate of pay.

6 RELEASE

7 10. Defendants and Ms. Garcia mutually release all claims relating to Ms. Garcia's
8 employment by Twin Peaks. This release pertains to David Barnett in his individual capacity, as
9 well as his official capacity as General Manager of Twin Peaks.

10 CONTINUING JURISDICTION OF THE COURT

11 11. The Court shall retain jurisdiction over both the subject matter of this Consent
12 Decree and the parties for a period of two years from entry of the Consent Decree, or until May
13 1, 2008, whichever is later, to effectuate and enforce this Consent Decree. Unless the State
14 notifies the Court that Defendant has breached this Consent Decree, which shall toll the Court's
15 continuing jurisdiction, this Consent Decree shall expire by its own terms on May 1, 2008,
16 without further action of the parties. The State may petition this Court for compliance with this
17 Consent Decree at any time during the period that this Court maintains jurisdiction over this
18 action. Should the Court determine that Defendant has not complied with this Consent Decree,
19 appropriate relief, including extension of the Consent Decree for such period as may be
20 necessary to remedy its non-compliance, may be ordered.

21 MISCELLANEOUS PROVISIONS

22 12. This Consent Decree shall be governed in all respects whether as to validity,
23 construction, capacity, performance or otherwise by the laws of the State of Arizona.

24 13. This Consent Decree shall be binding on Defendants, their agents, employees,
25 successors, assigns and all persons in active concert or participation with Defendants.

26 14. The entry of this Consent Decree shall not in any way be construed as an
27 admission of liability or fault by Defendants.

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15. The parties agree to the entry of this Consent Decree upon final approval by the Court. The effective date of the Consent Decree shall be the date that it is entered by the Court.

ENTERED AND ORDERED this 29th day of March 2007.



The Honorable ~~Sarah R. Simmons~~ *Paul C. Terry*
Pima County Superior Court

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